

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT W. TESSEN,

ORDER

Plaintiff,

08-cv-556-bbc

v.

KENT LEPAK,

Defendant.

This is a civil action in which plaintiff contends that defendants violated his rights under the Fourth Amendment by seizing his property without probable cause, his permission or a warrant. The case is before the court on cross-motions for summary judgment. However, now plaintiff has written a letter to the court dated June 19, 2009, which I construe as a motion for voluntary dismissal of the case.

When a motion for voluntary dismissal is filed after the defendant has filed an answer or motion for summary judgment such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only by court order, on terms that the court considers proper." Because defendant has been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice,

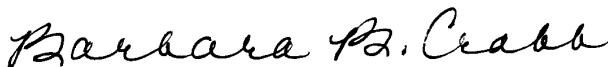
unless defendant agrees to a dismissal without prejudice as plaintiff asks. If defendants do not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendant may have until July 10, 2009, in which to advise plaintiff and the court whether he agrees to a dismissal of this action without prejudice. If defendant agrees to such a dismissal, the clerk of court is directed to enter a judgment of dismissal without prejudice. If defendant does not agree to such a dismissal, plaintiff may have until July 17, 2009, in which to withdraw his motion for voluntary dismissal. If, by July 17, 2009, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 30th day of June, 2009.

BY THE COURT:



BARBARA B. CRABB
District Judge